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23 **UNITED STATES DISTRICT COURT**

24 **CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

25 DEPUY SYNTHES SALES, INC., a
26 Massachusetts corporation, and
27 JONATHAN L. WABER, an
28 individual,

Case No. 5:18-cv-01557 FMO (KKx)

**JOINT STIPULATED
PROTECTIVE ORDER**

NOTE: CHANGES MADE BY THE COURT

Plaintiffs,

v.

STRYKER CORPORATION, a
Michigan corporation,

Defendant.

JOINT STIPULATED PROTECTIVE ORDER

090725.02434/119889274v.3

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17 STRYKER CORPORATION and HOWMEDICA OSTEONICS CORP.
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STIPULATION

IT IS HEREBY STIPULATED pursuant to Fed. R. Civ. P. 26(c) by and between Plaintiffs DePuy Synthes Sales, Inc. and Jonathan L. Waber (collectively, "Plaintiffs") on the one hand, and Defendants Stryker Corporation and Howmedica Osteonics Corp. ("Defendants") on the other hand, (each a "Party" and, together, the "Parties"), through their respective attorneys of record that a Protective Order ("Order" or "Stipulated Protective Order") may be entered by the Court in this action for good cause as follows:

1. A. PURPOSES AND LIMITATIONS

Plaintiffs and Defendants acknowledge that disclosure and discovery activity in this litigation will involve production of confidential, proprietary, trade secret, medical, psychological, personal or private information for which special protection from public dissemination or disclosure (and from use for any purpose other than prosecuting and defending this matter) would be warranted. Pursuant to Fed. R. Civ. P. 26(c), Local Rule 79-5, and any other applicable local laws and rules, the Parties wish to facilitate the orderly and efficient disclosure of relevant information, and to minimize the potential for unauthorized disclosure of confidential information.

The Parties acknowledge that any use of information or items deemed “Protected Material” pursuant to this Stipulated Protective Order at trial or in other court hearings or proceedings shall be governed exclusively by the orders of the presiding judge. The Parties further acknowledge that the terms of this Stipulated Protective Order do not apply to or operate to constrain in any way the Court or the Court’s personnel, who are subject only to the Court’s internal procedures regarding the handling of any material filed or lodged with the Court, including, without limitation, material filed or lodged under seal. The Parties also acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items deemed “Protected Material” as that term is defined below.

1 **B. GOOD CAUSE STATEMENT**

2 Counsel for Plaintiffs DePuy Synthes Sales, Inc. and Jonathan L. Waber (the
3 "Plaintiffs") and Defendants Stryker Corporation and Howmedica Osteonics Corp. (the
4 "Defendants") have conferred on the issue of disclosure of certain information relevant
5 to the claims and defenses in the above-captioned action. The Plaintiffs and Defendants
6 have agreed that both sides either have propounded or will propound discovery seeking
7 information and documents related to, *inter alia*, confidential, proprietary, trade secret,
8 medical, psychological, personal or private information. Good cause exists pursuant to
9 Federal Rule of Civil Procedure 26(c) to protect those involved in this litigation from
10 the disclosure of such information without adequate safeguards in place regarding
11 confidentiality.

12 **2. DEFINITIONS**

13 **2.1 Party.** Plaintiffs and Defendants, including his/its officers, directors,
14 employees, Experts or Consultants (as defined below) and outside counsel (as defined
15 below).

16 **2.2 Disclosure or Discovery Material.** All items or information, regardless
17 of the medium or manner generated, stored, or maintained (including, among other
18 things, testimony, transcripts, or tangible things) that are produced or generated in
19 disclosures, responses to discovery or other requests for documentation in this matter.

20 **2.3 Competitor.** "Competitor" means any manufacturer of, or any entity
21 involved in the sale of, medical devices and any person who, upon reasonable and good
22 faith inquiry, could be determined to be employed by, to be a consultant doing research
23 for, or otherwise to be retained by any manufacturer of, or any entity involved in the
24 sale of, medical devices.

1 **2.4 “CONFIDENTIAL” Information or Items.**

2 Means any hardcopy or electronic document, information, testimony (*i.e.*,
3 depositions, declarations, or other pre-trial statements in this Litigation), and all copies,
4 data, extracts, compilations, summaries, reports, and information obtained, derived, or
5 generated from such material that the party designating the material as confidential
6 reasonably believes to be entitled to confidential treatment under Federal Rule of Civil
7 Procedure 26(c)(1)(G), Local Rule 79-5, or other applicable laws or regulations.
8 Confidential material includes, but is not limited to, trade secrets (as defined in the
9 Uniform Trade Secrets Act); other confidential or proprietary research, development,
10 or commercial information; all information that, if disclosed, could result in
11 competitive, commercial, or business harm; and any person’s personal identifying
12 information, financial information, medical/insurance information, or other information
13 that is private under applicable laws or regulations.

14 **2.5 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”**
15 **Information or Items.**

16 Extremely sensitive information that the Disclosing Party considers in good faith
17 to contain or comprise information covered by paragraph 2.3 above, but that is so highly
18 sensitive or confidential that disclosure to a Party would pose a substantial risk of
19 impairing the personal, business or commercial interests of the Designating Party or
20 others subject to Rule 26(c) or under other applicable laws.

21 **2.6 Producing Party.** A Party that produces Disclosure or Discovery
22 Material in this case.

23 **2.7 Receiving Party.** A Party that receives Disclosure or Discovery Material
24 from a Producing Party.

25 **2.8 Designating Party.** A Party that designates information or items that it
26 produces in disclosures or in responses to discovery or otherwise as
27 “CONFIDENTIAL” Information or Items or “HIGHLY CONFIDENTIAL-
28 ATTORNEYS’ EYES ONLY” Information or Items.

1 **2.9 Challenging Party.** A Party that challenges the designation of
2 information or items under this Stipulated Protective Order.

3 **2.10 Protected Material.** Any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL” Information or Items or “HIGHLY
5 CONFIDENTIAL- ATTORNEYS’ EYES ONLY” Information or Items.

6 **2.11 Outside Counsel.** Attorneys who are not employees of a Party but who
7 are retained to represent or advise a Party in this action, including their employees and
8 independent companies or agencies that Outside Counsel directly retains on behalf of a
9 Party to perform litigation support services, including for example steno- or
10 videographic services.

11 **2.12 Expert or Consultant.** A person with specialized knowledge or
12 experience in a matter pertinent to the litigation who has been retained by a Party or its
13 counsel to serve as an expert or as a consultant in this action (regardless whether the
14 individual serves as a witness). This definition includes a professional jury or trial
15 consultant retained in connection with this litigation. An expert for purposes of this
16 Stipulated Protective Order shall not include anyone who is a past or current employee
17 of either an opposing Party or a Competitor.

18 **2.13 Professional Vendors.** Persons or entities that provide litigation support
19 services (e.g., photocopying; videotaping, translating; preparing exhibits or
20 demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and
21 their employees and subcontractors.

22 **3. SCOPE**

23 The protections conferred by this Stipulated Protective Order cover not only
24 Protected Material (as defined above), but also any information copied or extracted
25 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
26 testimony, conversations, or presentations by parties or counsel in this action or in other
27 settings that might reveal Protected Material. Nothing in this Order shall be construed
28 as requiring disclosure of documents, information or any other materials that are subject

1 to applicable privileges or immunities or that are, or may be claimed to be, otherwise
2 beyond the scope of permissible discovery. Nothing herein shall be construed as an
3 admission or concession by any party that any Protected Material constitutes relevant,
4 material, or admissible evidence in this matter.

5 **4. DURATION**

6 The parties to this Stipulated Protective Order intend that the protections
7 conferred by the designation of material as “Protected Material” shall apply to any
8 documents produced in this litigation so designated, regardless of whether or not this
9 Order has been entered by the Court. Further, the parties agree to “meet and confer” in
10 good faith after the conclusion of the subject litigation (if not before) to ensure that
11 “Protected Material” does not become part of the “public record.”

12 **5. DESIGNATING PROTECTED MATERIAL**

13 **5.1 Exercise of Restraint and Care in Designating Material for**
Protection.

15 Each Party that designates information or items for protection under this Order
16 must take care to limit any such designation to specific material that qualifies under the
17 appropriate standards, including, when reasonable, designating for protection only those
18 parts of material, documents, items, or oral or written communications which qualify
19 for protection under this Order.

20 If it comes to a Party’s attention that information or items that it designated for
21 protection do not qualify for protection at all, or do not qualify for the level of protection
22 initially asserted, that Party must promptly notify all other parties that it is withdrawing
23 the mistaken designation.

1 **5.2 Manner and Timing of Designations.**

2 Except as otherwise provided in this Order (*see, e.g.*, second paragraph of section
3 5.2(a), below), or as otherwise stipulated or ordered, material that qualifies for
4 protection under this Order must be clearly so designated before the material is
5 disclosed or produced. This, however, does not preclude a Designating Party from
6 designating Protected Material previously produced in this action prior to the Parties'
7 entry of this Stipulated Protective Order.

8 Designation in conformity with this Order requires:

9 **(a) For information in documentary form** (apart from transcripts of
10 depositions or other pretrial or trial proceedings):

11 (i) Documents Produced in Image, PDF, or hardcopy form
12 ("Image"). The Designating Party shall place on each page the following legend:
13 PROTECTED DOCUMENT, SUBJECT TO PROTECTIVE ORDER or PROTECTED
14 DOCUMENT—ATTORNEYS' EYES ONLY, SUBJECT TO PROTECTIVE
15 ORDER. The legend shall not obscure any content of the original document. Any person
16 making a copy of the image, if authorized under this Order, shall ensure that the same
17 legend shows on the copy.

18 (ii) Documents Produced in Native Format ("native file"). A
19 Designating Party shall rename each native file to include, at the end of the file name
20 and prior to the file extension, the following language: PROTECTED or
21 PROTECTED—ATTORNEYS' EYES ONLY. Any person making any copy of the
22 native file, if authorized under this Order, shall not rename the file.

23 **(b) For material produced prior to the entry of this Stipulated
24 Order:** Protected Material previously produced in this action prior to the entry of this
25 Stipulated Protective Order will be covered under this Protective Order as follows: the
26 Designating Party shall provide the Receiving Party with correspondence indicating
27 which documents previously produced that will be treated as "CONFIDENTIAL" or
28 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY." Such correspondence

1 shall bring such material previously produced in this action prior to the entry of this
2 Stipulated Protective Order under its protection as Protected Material.

3 **(c) For testimony given in deposition or in other pre-trial or trial**
4 **(litigation) proceedings:**

5 The Designating Party may designate information disclosed on the record at the
6 deposition, including testimony and exhibits, as “CONFIDENTIAL INFORMATION”
7 or “HIGHLY CONFIDENTIAL INFORMATION - ATTORNEYS’ EYES ONLY”
8 and request the preparation of a separate transcript of such material. Such separate
9 transcript shall include both deposition testimony and exhibits so designated. In
10 addition, deposition transcripts and exhibits shall be deemed confidential for thirty (30)
11 days after the Parties’ receipt of the final transcript. A Designating Party may designate
12 in writing, within thirty (30) days after receipt of any final deposition transcript in the
13 action, the specific pages of the transcript and exhibits to be treated as
14 “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL
15 INFORMATION – ATTORNEYS’ EYES ONLY.” The Designating Party shall then
16 be responsible to notify the Court Reporter and the Court Reporter shall provide a
17 separate transcript which shall include both deposition testimony and exhibits so
18 designated.

19 Transcript pages containing Protected Material must be separately bound by the
20 court reporter, who must affix to the top of each such page the legend
21 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
22 ONLY,” as instructed by the Party offering or sponsoring the witness or presenting the
23 testimony.

24 **(d) Information Contained in Responses to Written Discovery:**

25 A Designating Party may designate information disclosed in response to written
26 discovery requests (including subpoenas) as “CONFIDENTIAL INFORMATION” or
27 “HIGHLY CONFIDENTIAL INFORMATION – ATTORNEYS’ EYES ONLY” by so
28 indicating in said responses, on each page of any documents produced with such

1 responses, and/or as otherwise provided in Paragraph 5.2 above, identifying those
2 responses being so designated. In addition, a Designating Party may designate in
3 writing, within thirty (30) days after receipt of another Party or non-party's responses
4 to written discovery requests, the specific responses, documents, and/or other
5 information to be treated as "CONFIDENTIAL INFORMATION" or "HIGHLY
6 CONFIDENTIAL INFORMATION – ATTORNEYS' EYES ONLY."

7 **(e) For information produced in some form other than**
8 **documentary, and for any other tangible items:**

9 The Producing Party shall affix in a prominent place on the exterior of the
10 container or containers in which the information or item is stored the legend Party shall
11 affix in a prominent place on the exterior of the items the legend "CONFIDENTIAL,
12 PRODUCED BY [PARTY NAME] IN *DEPUY SYNTHES SALES, INC. V. STRYKER*
13 *CORP.*, CASE NO. 5:18-cv-01557" or "HIGHLY CONFIDENTIAL - ATTORNEY
14 EYES ONLY, PRODUCED BY [PARTY NAME] IN *DEPUY SYNTHES SALES, INC.*
15 *V. STRYKER CORP.*, CASE NO. 5:18-cv-01557." If only portions of the information
16 or item warrant protection, the Producing Party, to the extent practicable, shall identify
17 the protected portions, specifying whether they qualify as "CONFIDENTIAL" or as
18 "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY."

19 **5.3 Protected Material Disclosed by a Non-Party.**

20 For 30 days after a non-party makes disclosures in this proceeding, the
21 entire disclosure shall be treated as Protected Material under this Order.

22 Within the 30-day period, the non-party or a party in this action may
23 notify all other parties that all or specific portions of the disclosure are Protected
24 Material. Thereafter, the designated portions shall remain subject to this Order.

25 **5.4 Inadvertent Failure to Designate.**

26 An inadvertent failure to designate qualified information or items as
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"
28 does not, standing alone, waive the Designating Party's right to secure protection under

1 this Order for such material. If material is appropriately designated as
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”
3 after the material was initially produced, the Receiving Party, on notification of the
4 designation, must make reasonable efforts to assure that the material is treated in
5 accordance with the provisions of this Order.

6 **5.5 Challenges to Designations.**

7 A Party may challenge the propriety of any designation of any Discovery
8 Disclosure or Discovery Material made pursuant to this Order. The challenge shall be
9 made within forty-five (45) days of the challenging party’s receipt of the material to be
10 challenged and at a time that is consistent with the Court’s Scheduling Order. A
11 challenge may be made by serving by e-mail on all other Parties (and third parties, if
12 applicable) a “Notice of Objection” that identifies with particularity the Protected
13 Material as to which the designation is challenged and states the basis for each
14 challenge.

15 (a) After any challenge is asserted to a designation made according to
16 the procedures set forth in Paragraph 5.2 above and its various sub-paragraphs, the
17 Protected Material shall continue to have its designation until the challenge is fully
18 resolved according to the procedures set forth in this paragraph 5.5(d).

19 (b) Within thirty (30) calendar days after service of a Notice of
20 Objection in full compliance with paragraph 5.5 above, the Designating Party shall e-
21 mail a response to the Notice of Objection setting forth the legal and factual grounds on
22 which the Designating Party bases its position that the materials have been properly
23 designated. If no such response is provided the objection will be deemed sustained and
24 the document, information or material at issue shall be re-designated in accordance with
25 the objection.

26 (c) The Parties will strictly comply with Local Rule 37-1 and will
27 attempt to resolve each challenge in good faith before requesting judicial intervention.
28 The Parties must begin the process by conferring directly (in voice to voice dialogue;

1 other forms of communication are not sufficient) within 14 days of the date of service
2 of notice. In conferring, the Challenging Party must explain the basis for its belief that
3 the confidentiality designation was not proper and must give the Designating Party an
4 opportunity to review the designated material, to reconsider the circumstances, and, if
5 no change in designation is offered, to explain the basis for the chosen designation.

6 (d) If, after response by the Designating Party the Challenging Party
7 remains unconvinced of the propriety of the designation, the Challenging Party may file
8 a motion objecting to the designation and seeking the Court's leave to redesignate the
9 identified information within thirty (30) calendar days after receipt of the response to
10 the Notice of Objection. In seeking judicial intervention, the Parties will strictly comply
11 with Local Rules 37-2 and 79-5, including, specifically, Local Rule 79-5.2.2. The
12 Designating Party shall bear the burden of establishing that it properly designated the
13 Protected Material within the meaning of this Protective Order or that the information
14 is otherwise deserving of an alternative designation.

15 If such a motion is timely filed, the original designation shall remain effective
16 until the later of: (i) thirty (30) court days after service of notice of entry of an order re-
17 designating the materials, or (ii) an appellate court's ruling on any timely filed writ
18 petition.

19 **6. ACCESS TO AND USE OF PROTECTED MATERIAL**

20 **6.1 Basic Principles.**

21 A Receiving Party may use Protected Material only for purposes of prosecuting
22 and defending this action. Such Protected Material may be disclosed only to the Court
23 and its employees or other staff (e.g., externs) and to the categories of persons described
24 in this Stipulated Protective Order. When the litigation has been concluded, a Receiving
25 Party shall comply with the provisions of Paragraphs 4, 8, 9 and 13.

26 **6.2 Pleadings, Motion Papers, and Written Discovery Papers.** The parties
27 shall comply with all of the requirements contained in L.R. 79-5 prior to including any
28 material that another party has designated as Protected Material in pleadings, motion

1 papers (written motions, affidavits, and briefs), or written discovery papers (requests
2 and responses).

3 **6.3 Protected Material, including, without limitation, material**
4 **designated as “CONFIDENTIAL,” May Be Disclosed Only to the Following**
5 **Qualified Persons:**

6 (a) All Parties in this Action (including his/its officers, directors, and
7 employees);

8 (b) Outside Counsel as defined above, including counsel’s partners,
9 employees, and agents (*e.g.*, outside copy services, litigation-support services, and
10 stenographers) retained in the Action;

11 (c) Experts or Consultants, as defined above, but only if: (1) the
12 Expert or Consultant has signed a copy of the Certification (Exhibit A), (2) is not a
13 Competitor of the Designating Party, and (3) Counsel for the Party retaining the
14 Expert or Consultant, after duly diligent inquiry, does not know of any instance in
15 which the Expert or Consultant has been found to be in violation of the terms of a
16 protective order in any legal proceeding;

17 (d) A witness at a deposition or pre-trial hearing, if the witness will give
18 relevant testimony regarding the Protected Material to be disclosed or if disclosure is
19 necessary to prepare the witness for the testimony, and only after the witness has signed
20 a copy of the Certification;

21 (i) This provision does not preclude the Designating Party from
22 objecting to or moving to preclude disclosure to any witness, or from seeking
23 amendment of this provision in the future;

24 (e) Any person identified as an author, source, addressee, or recipient
25 of the material or who already has a copy of the “CONFIDENTIAL” Information,
26 provided such persons may not retain any “CONFIDENTIAL” Information shown to
27 them and only after execution of the Certification;

1 (f) Any other person mutually agreed upon among the Parties, but only
2 if that person has signed the Certification;

3 (g) Any mediators or arbitrators selected to assist in resolution of this
4 matter, and their personnel actively engaged in assisting them;

5 (h) The Court or any Court personnel, including any court reporters;
6 and,

7 (i) Any other person by written agreement of the Designating Party
8 and only after execution of the Certification.

9 **6.4 Information Designated as “HIGHLY CONFIDENTIAL -
10 ATTORNEYS’ EYES ONLY” May Be Disclosed Only to the Following Qualified
11 Persons:**

12 (a) Outside Counsel as defined above, including counsel’s partners,
13 employees, and agents (*e.g.*, outside copy services, litigation-support services, and
14 stenographers) retained in the Action;

15 (b) Experts or Consultants, as defined above, but only if: (1) the
16 Expert or Consultant has signed a copy of the Certification (Exhibit A), (2) is not a
17 Competitor of the designating Party, and (3) Counsel for the Party retaining the Expert
18 or Consultant, after duly diligent inquiry, does not know of any instance in which the
19 Expert or Consultant has been found to be in violation of the terms of a protective
20 order in any legal proceeding;

21 (c) Any person identified as an author, source, addressee, or recipient
22 of the material or who already has a copy of the “HIGHLY CONFIDENTIAL -
23 ATTORNEYS’ EYES ONLY” Information, provided such persons may not retain any
24 “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY” Information shown to
25 them and only after execution of the Certification;

26 (d) Any mediators or arbitrators selected to assist in resolution of this
27 matter, and their personnel actively engaged in assisting them;

28 (e) The Court or any Court personnel, including any court reporters;

1 (f) A witness at a deposition or pre-trial hearing, if the witness will
2 give relevant testimony regarding the Highly Confidential - Attorneys' Eyes Only
3 Information to be disclosed or if disclosure is necessary to prepare the witness for the
4 testimony, and only after the witness has signed a copy of the Certification; and

5 (g) Any other person by written agreement of the Designating Party
6 and only after execution of the Certification.

7 **6.5 Required Handling of Protected Material.**

8 (a) Protected Material shall not be disclosed to anyone for any purpose other
9 than as required for the preparation of trial or any appeal in this action, and, in that
10 limited context, shall be disclosed only to Qualified Persons as set out below.
11 Protected Material shall not be used for any business, competitive or other non-
12 litigation purpose.

13 (i) Protected Material in native format may be copied solely (a) for
14 use in a litigation-support application or (b) as mutually agreed upon by the parties.

15 (b) Each Party and its counsel, and each Qualified Person identified in ¶¶ 6.3
16 and 6.4 (other than the Court), including any person or entity acting on behalf of, or
17 for the benefit of, that Qualified Person, (i) shall not permit or enable unauthorized
18 dissemination of Protected Material to anyone; (ii) shall take all necessary and prudent
19 measures to preserve the security of Protected Material, including measures to
20 minimize risks of hacking of, and other unauthorized access to, systems on which
21 Protected Material is stored or through which it is transmitted; and (iii) shall
22 physically store, maintain, and transmit Protected Material solely within the United
23 States.

24 (c) If Protected Material is disclosed in a manner not authorized by this
25 Order, or if an attempt is made to hack or otherwise gain unauthorized access to a
26 system containing Protected Material (jointly, "unauthorized actions"), each Party or
27 Qualified Person with knowledge of the unauthorized actions immediately shall take
28 necessary and prudent remedial measures to prevent their reoccurrence and promptly

1 shall inform the Designating Party of such remedial measures and of all facts relating
2 to the unauthorized actions, including identification of all Protected Material
3 disclosed.

4 (d) Nothing in this Order shall limit any Designating Party's use of its own
5 documents, including disclosure of its own Protected Material to any person for any
6 purpose.

7 **7. REDACTIONS.** Prior to any discovery-related disclosure or production, the
8 Producing Party may redact information or material that is protected from disclosure
9 by applicable privilege or immunity, that is governed by any applicable privacy law or
10 regulation, that contains commercially sensitive or proprietary non-responsive
11 information, or that any Order entered in this Action allows to be redacted. The
12 Producing Party also may withhold entire non-responsive attachments in a document
13 family and may produce slipsheets in their place.

14 **7.1 Methods of Redaction.**

15 (a) Each redaction in a TIFF-image shall be indicated clearly on the
16 image as being based on "Privilege" or "Other."

17 (b) For native files requiring redaction, redacted text shall be replaced
18 with the terms "Privilege" or "Other," and the Producing Party shall produce the
19 redacted file either in native format or in an authorized TIFF-image format.

20 (c) For metadata fields requiring redaction, field content shall be
21 replaced by the term "Redacted," and the modified field shall be included in any
22 required .dat file.

23 (d) The terms of ¶5.4 above shall apply to any unintentional failure to
24 redact information.

25 **8. DESIGNATING PARTY'S USE OF OWN DOCUMENTS**

26 Nothing in this Order shall limit any Designating Party's use of its own
27 documents and information, including Protected Material, in this action or otherwise.
28 Such disclosure shall not affect any designations made pursuant to the terms of this

1 Order so long as the disclosure is made in a manner that is reasonably calculated to
2 maintain the confidentiality of the information.

3 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
4 **IN OTHER LITIGATION**

5 If a Receiving Party is served with a subpoena or an order issued in other
6 litigation that would compel disclosure of any information or items designated in this
7 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES
8 ONLY,” the Receiving Party must so notify the Designating Party’s Outside Counsel
9 in writing sent by e-mail immediately and in no event more than seven business days
10 after receiving the subpoena or order. Such notification must include a copy of the
11 subpoena or court order, the identification of the Protected Material(s) which the
12 Receiving Party believes to be implicated by the subpoena or order, and must indicate
13 the basis or bases by which the Receiving Party believes that the identified documents
14 are subject to disclosure.

15 The Receiving Party must also immediately inform, in writing, the party causing
16 the subpoena or order to issue that some or all responsive material is subject to this
17 Protective Order. A copy of this Stipulated Protective Order shall be included therewith.

18 The purpose of imposing these duties is to alert the interested parties to the
19 existence of this Protective Order and to afford the Designating Party in this case an
20 opportunity to protect its confidentiality interests in the court from which the subpoena
21 or order issued.

22 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

23 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
24 Protected Material to any person or in any circumstance not authorized under this
25 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
26 the Designating Party of the unauthorized disclosures, (b) use its best efforts to recover
27 all copies of the Protected Material, (c) inform the person or persons to whom
28 unauthorized disclosures were made of all the terms of this Order, and (d) request that

1 such person or persons to return and/or destroy all copies of all materials so disclosed
2 and certify that such return and/or destruction has taken place.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
4 PROTECTED MATERIAL**

5 The production of information protected by the attorney-client privilege, work
6 product doctrine, or any other privilege or protection from disclosure is not a waiver of
7 the privilege or protection from discovery in this case or in any other federal or state
8 proceeding. If information is produced in discovery that is subject to a claim of
9 privilege or of protection as a trial-preparation material, the party making the claim may
10 notify any party that receiving such information of such claim and the basis for it. After
11 being notified, a Party must promptly return or destroy the specified information and
12 any copies it has and may not sequester, use or disclose the information until the claim
13 is resolved. When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other protection,
15 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
16 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
17 may be established in an e-discovery order that provides for productions without prior
18 privilege review. Pursuant to Federal Rule of Evidence 502(d) and ¶ insofar as the
19 parties reach an agreement on the effect of disclosure of a communication or
20 information covered by the attorney-client privilege or work product protection, the
21 parties may incorporate their agreement in the stipulated protective order submitted to
22 the court.

23 If the Receiving Party receives documents, ESI, or other forms of information
24 from the Producing Party that, upon inspection or review, appear in any respect to
25 contain or constitute potentially privileged information, the Receiving Party shall
26 immediately stop review of such information, shall not distribute it further even
27 amongst the Party's own case team except as strictly necessary to confirm the privileged
28 nature of its contents, promptly sequester the potentially privileged information, and

1 immediately identify the potentially privileged information to the Producing Party.

2 The Receiving Party may object to the Producing Party's designation of disclosed
3 information as privileged material by providing written notice of such objection within
4 seven days of its receipt of a written demand for the return of the disclosed privileged
5 material. The Parties will strictly comply with Local Rules 37-1 and 37-2 in connection
6 with any dispute regarding the designation of information as privileged material. If
7 the Parties are unable to resolve any such dispute, the issue shall be resolved by the
8 Court after an in camera review of the disclosed privileged material. However, the
9 Receiving Party agrees not to argue in connection with a dispute over privileged
10 material that the information may not have been reviewed by the Producing Party prior
11 to its disclosure or that the Producing Party did not take reasonable steps to prevent
12 disclosure. Pending resolution of any such dispute by the Court, the Receiving Party
13 shall not review and shall not use the disclosed privileged material in any respect.

14 This Order shall be interpreted to provide the maximum protection allowed by
15 Federal Rule of Evidence ("FRE") 502(d). FRE 502(b) is inapplicable to any disclosed
16 privileged material. Under FRE 502(d) and 28 U.S. Code § 1738, this Order shall be
17 enforceable and granted full faith and credit in all other state and federal proceedings.
18 Any subsequent conflict of law analysis shall apply the law most protective of privilege
19 and work product.

20 Nothing contained herein is intended to or shall serve to limit a party's right to
21 conduct a review and segregation for withholding from production documents, ESI or
22 information (including metadata) on the basis of relevance or responsiveness to
23 discovery requests, or that is privileged material.

24 **12. MISCELLANEOUS**

25 **12.1 Right to Further Relief.**

26 All Parties reserve the right to seek modification of this Order at any time for
27 good cause, including obtaining appropriate orders for deponents who refuse to sign the
28 attached Certification (i.e. Exhibit A). The Parties agree to meet and confer prior to

1 seeking to modify this Order for any reason. The restrictions imposed by this Order
2 may only be modified or terminated by written stipulation of all Parties or by order of
3 Court. No Party shall be prejudiced in any way of its right to petition the Court for a
4 further protective order relating to any purportedly confidential information. Nothing in
5 this Order Shall prevent any Party from seeking additional Protective Orders or other
6 appropriate relief with respect to the scope of discovery and/or any discovery requests,
7 depositions, and/or portions thereof that such Party believes to be inappropriate,
8 harassing, or otherwise impermissible under applicable law.

9 **12.2 Right to Assert Other Objections.**

10 By stipulating to the entry of this Protective Order, no Party waives any right it
11 otherwise would have to object to disclosing or producing any information or item on
12 any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives
13 any right to object, on any ground, to use in evidence of any Protected Material.

14 **12.3 Filing Protected Material.**

15 Without written permission from the Designating Party or a court order secured
16 after appropriate notice to all interested persons, a Party may not file in the public record
17 in this action any Protected Material. A Party that seeks to file under seal any Protected
18 Material must comply with Civil Local Rule 79-5.2. In the event that a Party's request
19 to file Protected Material under seal is denied by the Court, then the Receiving Party
20 may file the information in the public record unless otherwise instructed by the Court.

21 **13. COMPLIANCE WITH ORDER**

22 A Party's compliance with the obligations imposed on it by this Order, including
23 any obligations concerning the treatment of information designated as
24 "CONFIDENTIAL INFORMATION" or "HIGHLY CONFIDENTIAL
25 INFORMATION – ATTORNEYS' EYES ONLY," shall not be deemed an admission
26 by the complying Party or otherwise be evidence that the information so designated is
27 confidential, proprietary, trade secret, or private information. Nor shall such
28 compliance be deemed a waiver of the complying Party's right to challenge the

1 Designating Party's designation of Protected Material as "CONFIDENTIAL
2 INFORMATION" or "HIGHLY CONFIDENTIAL INFORMATION –
3 ATTORNEYS' EYES ONLY."

4 **14. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
5 IN OTHER LITIGATION.**

6 If a Party is served with a subpoena or a court order issued in other litigation that
7 compels disclosure of any information or items designated in this action as
8 "CONFIDENTIAL," that Party must:

9 (a) promptly notify in writing the Designating Party. Such notification
10 shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Protective Order. Such notification shall include a
14 copy of this Stipulated Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected.

17 If the Designating Party timely seeks a protective order, the Party served with the
18 subpoena or court order shall not produce any information designated in this action as
19 "CONFIDENTIAL" before a determination by the court from which the subpoena or
20 order issued, unless the Party has obtained the Designating Party's permission. The
21 Designating Party shall bear the burden and expense of seeking protection in that court
22 of its confidential material – and nothing in these provisions should be construed as
23 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive
24 from another court.

25 **15. FINAL DISPOSITION**

26 Unless otherwise ordered or agreed in writing by the Producing Party, within
27 sixty days after the final termination of this litigation, each Receiving Party must return
28 all Protected Material to the Producing Party. As used in this subdivision, "all Protected

1 Material" includes all copies, abstracts, compilations, summaries or any other form of
2 reproducing or capturing any of the Protected Material. With permission in writing
3 from the Producing Party, the Receiving Party may destroy some or all of the Protected
4 Material instead of returning it. Whether the Protected Material is returned or
5 destroyed, the Receiving Party must submit a written certification to the Producing
6 Party (and, if not the same person or entity, to the Designating Party) by the sixty day
7 deadline that identifies (by category, where appropriate) all the Protected Material that
8 was returned or destroyed and that affirms that the Receiving Party has not retained any
9 copies, abstracts, compilations, summaries or other forms of reproducing or capturing
10 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
11 retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda,
12 correspondence or attorney work product, even if such materials contain Protected
13 Material. Any such archival copies that contain or constitute Protected Material remain
14 subject to the terms of this Stipulated Protective Order.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 Dated: June 6, 2019

BLANK ROME LLP

17 By: /s/ Anthony B. Haller

18 Anthony B. Haller

19 Gregory M. Bordo

20 Leigh Ann Buziak

21 Jeffrey Rosenfeld

22 Attorneys for Plaintiffs, DEPUY

23 SYNTHES SALES, INC. AND

24 JONATHAN L. WABER

25

26

27

28

1 Dated: June 6, 2019

SEYFARTH SHAW LLP

2 By: /s/ D. Joshua Salinas

3 Michael D. Wexler

4 Robert B. Milligan

5 D. Joshua Salinas

6 Attorneys for Defendants STRYKER
7 CORPORATION and HOWMEDICA
8 OSTEONICS CORP.

9 Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Anthony B. Haller, hereby certify that
10 the content of this document is acceptable to D. Joshua Salinas, counsel
11 for Defendants, and that Mr. Salinas has provided his authorization to affix his
12 electronic signature to this document.

13 /s/ Anthony B. Haller

14 Anthony B. Haller

15 **JOINT STIPULATED PROTECTIVE ORDER**

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090725.02434/119889274v.3

1 **O R D E R**
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3 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

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6 DATED: June 7, 2019
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Judge Kenly Kiya Kato
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type address], have received a copy of the Stipulated Protective Order entered by the United States District Court for the Central District of California (the “Court”) in the case of *DePuy Synthes Sales, Inc. et al. v. Stryker Corporation*, Case No. 5:18-cv-17 FMO (KKx). I certify that I am not a Competitor, as defined in the Stipulated Protective Order. I have read the Stipulated Protective Order in its entirety, understand it, and I agree to comply with it fully and to be bound by all of its terms.

I understand any violation of the Stipulated Protective Order may subject me to sanctions by the Court, in addition to any other remedies that a Party may have. I hereby submit to the jurisdiction of the Court for purposes of enforcing the Stipulated Protective Order, whether during the action or after its conclusion

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date: Printed name:

Signature: _____